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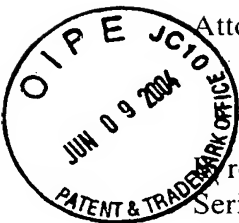
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Attorney Docket No. 5573-115IP7CT7

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Whittle *et al.*

Serial No.: 10/769,021

Filed: January 30, 2004

For: *Pharmaceutical Formulations*

Confirmation No.: 9712

Group Art Unit: 1614

Date: June 7, 2004

Office of Patent Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ACCORD THE PROPER FILING DATE

Sir:

As set forth in 37 CFR § 1.10(c) and MPEP § 506.02, Applicants hereby petition to grant the proper filing date of January 30, 2004 rather than February 2, 2004 for the above-identified patent application as this was the date the application was deposited as "Express Mail" in the U.S. Postal Service. The following is enclosed as evidence of January 30, 2004 being the correct filing date for the application, which was properly filed under 37 C.F.R. § 1.10:

1. A true and accurate copy of the Cover Sheet for the Application showing the Express Mail signature and date on Page 2;
2. A true and accurate copy of the Express Mail Receipt showing "acceptance" or deposit date with the USPS on January 30, 2004; and
3. A true and accurate copy of our return post card and of the official filing receipt for this application, sent by the United States Patent and Trademark Office, showing that Applicants were improperly given the filing date of February 2, 2004 instead of the Express Mail date of January 30, 2004.

This petition is being filed promptly after Applicants became aware of the improperly accorded filing date. Accordingly, Applicants respectfully request the granting of January 30, 2004 as the filing date pursuant to 37 CFR § 1.10.

On the basis that Applicants properly followed the requirements of 37 CFR § 1.10 and the USPTO failed to accord the proper filing date under MPEP § 505 and thus the need to file this petition is due to error on the part of the USPTO, it is applicants' belief that no fee is due

In re: Whittle *et al.*
Serial No.: 10/769,021
Filed: January 30, 2004
Page 2

with this petition. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

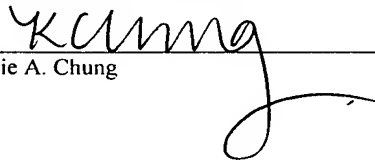


Jarett K. Abramson
Attorney For Applicants
Registration No. 47,376

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Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 7, 2004.


Katie A. Chung



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

ATTY DOCKET NO.: 5573-115IP7CT7

DATE: January 30, 2004

**UTILITY PATENT APPLICATION TRANSMITTAL LETTER
AND FEE TRANSMITTAL FORM (37 CFR § 1.53(b))**

Mail Stop PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COPY

Sir:

Transmitted herewith for filing under 37 CFR § 1.53(b) is:

- ☐ a patent application
☒ a Continuation ☐ a Divisional ☐ a Continuation-in-Part (CIP) Application of prior US application no.: 10/434,259, pending, filed May 8, 2003, which is a continuation of U.S. Patent No. 6,667,321, filed July 3, 2002, which is a continuation of U.S. Patent No. 6,444,689, filed January 25, 2002, which is a continuation of U.S. Patent No. 6,369,087, filed August 24, 2000, which is a continuation-in-part of U.S. Patent No. 6,262,085, filed March 7, 2000, the disclosures of which are incorporated herein by reference in their entireties.
☒ and claims the benefit of Provisional Application No. 60/150,878, filed August 26, 1999.

Inventor(s) or Application Identifier:

Robert R. Whittle;
Frederick D. Sancilio;
Grayson Walker Stowell;
Douglas John Jenkins;
Linda B. Whittall

Entitled: **Pharmaceutical Formulations**

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401
Customer No. 20792

Enclosed are:

1. ☒ Application Transmittal Letter and Fee Transmittal Form (*A duplicate is enclosed for fee processing*)
2. ☒ 135 pages of Specification (including 20 claims)
3. ☐ sheets of Formal Drawings (35 USC 113)
4. ☒ Oath or Declaration
 - a. ☐ newly executed (*original or copy*)
 - b. ☒ copy from prior application (37 CFR 1.63(d) (*for continuation/divisional*) [Note Box 6 Below]
 - c. ☐ DELETION OF INVENTOR(S) (*Signed statement deleting inventor(s) named in the prior application*)
5. ☐ Application Data Sheet. See 37 CFR 1.76
6. ☒ Incorporation By Reference (*useable if box 4b is checked*)

The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under

Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

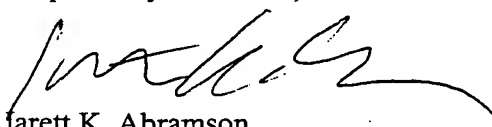
7. ☐ Microfiche Computer Program (*Appendix*)
8. ☐ Assignment papers (*cover sheet(s) and document(s)*)
9. ☐ Applicant claims small entity status. See 37 CFR § 1.27.
10. ☒ Information Disclosure Statement, PTO-1449, and 0 references cited
11. ☐ Preliminary Amendment (*Please enter all claim amendments prior to calculating the filing fee.*)
12. ☐ English Translation Document
13. ☐ Certified Copy of Application No. ; Filed
14. ☐ Sequence Listing/ Sequence Listing Diskette
 - a. ☐ computer readable copy
 - b. ☐ paper copy
 - c. ☐ statement in support
15. ☐ An Associate Power of Attorney
16. ☒ Return Receipt Postcard (MPEP 503) (*Should be specifically itemized*)
17. ☐ Deletion of Inventor(s) (Signed statement attached deleting inventor(s) name in the prior application. See 37 CFR 1.63(d)(2) and 1.33(b).
18. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i). Applicant must attach form.
19. ☐ Other:

The fee has been calculated as shown below:

	Column 1 No. Filed	Column 2 No. Extra	Small Entity Rate Fee	Large Entity Rate Fee
BASIC FEE			\$385.00	\$ 770.00
TOTAL CLAIMS	20 - 20 =	0	x 09 = \$	x 18 = \$
INDEP CLAIMS	4 - 3 =	1	x 43 = \$	x 86 = \$86.00
<input type="checkbox"/> MULTIPLE Dependent Claims Presented			+ 145 = \$	+ 290 = \$
If the difference in Col. 1 is less than zero, Enter "0" in Col. 2			Total \$	Total \$856.00

- ☒ A check in the amount of **\$856.00** to cover the filing fee is enclosed.
- ☐ A check in the amount of \$ is enclosed to cover the filing fee, PLUS the Assignment Recordation fee (\$40.00).
- ☐ Please charge my Deposit Account No. 50-0220 in the amount of \$
- ☒ The Commissioner is hereby authorized to credit overpayments or charge the following fees associated with this communication to Deposit Account No. 50-0220:
 - a. ☒ Additional filing fees under 37 CFR 1.16 for presentation of extra claims.
 - b. ☒ Additional patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

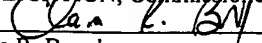

Jarett K. Abramson
Registration No. 47,376

CERTIFICATE OF EXPRESS MAILING

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Date of Deposit: January 30, 2004

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JKA/kib Date: Jan. 30, 2004
02-12-04 AUG Doc. No. 5573-1152071P7
Serial No. TO Be Assigned
Inventor: Whittle et al.

10/769021

Respectfully submitted,
MYERS BIGEL SIBLEY & SAJOVEC, P.A. 020204
Attorneys for Applicant



JKA

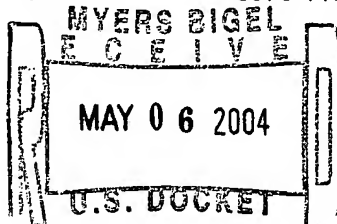
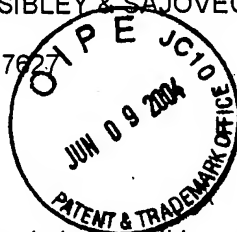


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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/769,021	02/02/2004	1614	856	5573-115IP7CT7		20	4

20792
 MYERS BIGEL SIBLEY & SAJOVEC
 PO BOX 37428
 RALEIGH, NC 27627



CONFIRMATION NO. 9712

FILING RECEIPT



OC000000012502208

Date Mailed: 05/03/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Robert R. Whittle, Wilmington, NC;
 Frederick D. Sancilio, Wilmington, NC;
 Grayson Walker Stowell, Wilmington, NC;
 Douglas John Jenkins, Wilmington, NC;
 Linda B. Whittall, Wilmington, NC;

COPY

Domestic Priority data as claimed by applicant

This application is a CON of 10/434,259 05/08/2003 PAT 6,706,737
 which is a CON of 10/189,659 07/03/2002 PAT 6,667,321
 which is a CON of 10/057,659 01/25/2002 PAT 6,444,689
 which is a CON of 09/645,145 08/24/2000 PAT 6,369,087
 which is a CIP of 09/519,976 03/07/2000 PAT 6,262,085
 which claims benefit of 60/150,878 08/26/1999

Foreign Applications

If Required, Foreign Filing License Granted: 04/30/2004

Projected Publication Date: 08/12/2004

Non-Publication Request: No

05-05-04 A09:21 IN

Early Publication Request: No

Title

Alkoxy substituted benzimidazole compounds, pharmaceutical preparations containing the same, and methods of using the same

Preliminary Class

514

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Title 37, Code of Federal Regulations, 5.11 & 5.15**

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